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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010 - 219

12 **JACQUELINE NICOLE CARVAJAL**  
13 **A.K.A. JACQUELINE CARVAJAL VIERA**  
14 **192 E. Vista Avenue**  
**Daly City, California 94014**  
**Registered Nurse License No. 638037**

**ACCUSATION**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
21 of Consumer Affairs.

22 2. On or about June 4, 2004, the Board of Registered Nursing issued Registered Nurse  
23 License Number 638037 to Jacqueline Nicole Carvajal, also known as Jacqueline Carvajal Viera  
24 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to  
25 the charges brought herein and will expire on October 31, 2009, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states, in pertinent part, that "[t]he board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct . . . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 of the Code states, in pertinent part, that "[i]n addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1           "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
2 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
3 or the possession of, or falsification of a record pertaining to, the substances described in  
4 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
5 thereof."

6           8.     Section 490 of the Code states, in pertinent part, that "[a] board may suspend or  
7 revoke a license on the ground that the licensee has been convicted of a crime, if the crime is  
8 substantially related to the qualifications, functions, or duties of the business or profession for  
9 which the license was issued. A conviction within the meaning of this section means a plea or  
10 verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is  
11 permitted to take following the establishment of a conviction may be taken when the time for  
12 appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order  
13 granting probation is made suspending the imposition of sentence, irrespective of a subsequent  
14 order under the provisions of Section 1203.4 of the Penal Code."

15           9.     Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licensee found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

#### 19                           FIRST CAUSE FOR DISCIPLINARY ACTION

##### 20                                   (Substantially Related Conviction)

21           10.    Respondent has subjected her registered nurse license to disciplinary action under  
22 Sections 2761(f) and 490 of the Code in that she was convicted of a crime substantially related to  
23 the qualifications, functions or duties of a registered nurse in that on or about November 25, 2008,  
24 in the Superior Court of California, County of San Francisco, Case No. 2305898, entitled *The*  
25 *People of the State of California vs. Jacqueline C. Viera*, Respondent was convicted by guilty  
26 plea of violating Section 647(f) of the Penal Code (disorderly conduct, under the influence of  
27 alcohol in a public place and in a condition unable to take care of herself), a misdemeanor.  
28 Pursuant to said conviction, the imposition of sentence was suspended and Respondent was

1 placed on probation for one year upon terms and conditions, which included, but were not limited  
2 to; the following: serve two days in County Jail, with credit for time served of two days; enroll in  
3 and complete a three month First Offenders Program (FOP); submit proof of completion of FOP;  
4 upon completion of FOP, may apply for an early termination of probation; and obey all laws. The  
5 factual circumstances surrounding said conviction are as follows:

6 a. On or about February 28, 2007, in San Francisco, California, Respondent  
7 backed her vehicle, a 2001 Dodge Intrepid, into another vehicle legally parked behind her and  
8 being operated by T. L<sup>1</sup>. Thereafter, T. L.'s husband took the keys away from Respondent  
9 because he believed that she was "drunk" and was trying to leave the scene of the accident.  
10 Thereafter, Respondent flagged down a San Francisco Police Department (SFPD) marked vehicle  
11 and spoke with SFPD Officer Schor, who smelled a "strong" odor of an alcoholic beverage on her  
12 breath and made other observations that Respondent was driving while under the influence of  
13 alcohol. Respondent also failed several field sobriety tests and took a breath sample, which  
14 showed her blood alcohol content to be .191 percent. Respondent then refused to take a second  
15 breath test. After being arrested for driving under the influence of alcohol, she agreed to take two  
16 more breath tests at Mission Police Station, whose results showed a blood alcohol content of .19  
17 percent at 2320 hours and .18 percent at 2321 hours. Eventually, Respondent was charged by the  
18 SFPD with violating Vehicle Code sections 23152(a) (driving under the influence of alcohol) and  
19 23152(b) (driving while having a blood alcohol content of .08% and more). As set forth above,  
20 Respondent was convicted of violating Penal Code 647(f) (disorderly conduct, under the  
21 influence of alcohol in a public place and in a condition unable to take care of herself)

## 22 SECOND CAUSE FOR DISCIPLINARY ACTION

23 (Conviction of a Crime Involving Alcohol)

24 11. The allegations of paragraph 10 are hereby realleged and incorporated by  
25 reference as if fully set forth.

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28 <sup>1</sup> The victim will be referred to by initials only in order to preserve confidentiality.

1           12. Respondent has subjected her registered nurse license to disciplinary action  
2 under Section 2761(a) of the Code on the grounds of unprofessional conduct, as defined by Code  
3 section 2762(c), in that on or about November 25, 2008, Respondent was convicted of a crime  
4 involving the consumption of alcoholic beverages, as set forth above in paragraph 10.

5                           THIRD CAUSE FOR DISCIPLINARY ACTION

6                                   (Use of Alcohol to a Dangerous Extent)

7           13. The allegations of paragraph 10 are hereby realleged and incorporated by  
8 reference as if fully set forth.

9           14. Respondent has subjected her registered nurse license to disciplinary action  
10 under Section 2761(a) of the Code on the grounds of unprofessional conduct, as defined in Code  
11 section 2762(b), in that on or about February 28, 2007, Respondent used and was under the  
12 influence of alcoholic beverages, while operating a vehicle in San Francisco County, California,  
13 to an extent dangerous or injurious to herself and the public, as set forth above in paragraph 10.

14                           MATTERS IN AGGRAVATION OF PENALTY

15           15. Complainant alleges the following criminal history by way of aggravation of  
16 any penalty to be imposed in this matter:

17           a. On or about February 5, 2002, in the Superior Court of California, County of  
18 San Mateo, Case No. NM317293A, entitled The People of the State of California vs. Jacqueline  
19 Nicole Carvajal, Respondent was convicted by her plea of nolo contendere of violating Section  
20 666 of the Penal Code (petty theft w/ prior jail: specific offenses), a misdemeanor. Pursuant to  
21 said conviction, the imposition of sentence was suspended and Respondent was placed on  
22 probation for two years upon terms and convictions, which included, but were not limited to, the  
23 following: serve 15 days in County Jail with credit for time served of 2 days with  
24 recommendation that Respondent participate in Sheriff's work program; pay criminal justice  
25 administration fee of \$183.00 to the Colma PD; submit person, vehicle, place of residence to  
26 search and seizure at any time of day or night, to any laws enforcement officer, with or without a  
27 warrant and with or without probable cause; and obey all laws. The factual circumstances  
28 surrounding the conviction are that on or about December 20, 2001, at a KMart store in Colma,

1 California, Respondent stole KMart merchandise by removing several plastic bags from her purse  
2 and placing the merchandise into those plastic bags, then concealing them in her purse, and  
3 exiting the store without paying for the merchandise.

4 b. On or about January 22, 1996, in the Superior Court of California, County of  
5 San Mateo, Case No. NM260719A, entitled The People of the State of California vs. Jacqueline  
6 Nicole Carvajal, Respondent was convicted by her plea of nolo contendere of violating Section  
7 460(b) of the Penal Code (burglary in the second degree), a misdemeanor. Pursuant to said  
8 conviction, the imposition of sentence was suspended and Respondent was placed on probation  
9 for 18 months upon terms and convictions, which included, but were not limited to, the following:  
10 serve 10 days in County Jail, to be served on weekends with recommendation for the Sheriff's  
11 Work Program; pay restitution fee of \$110.00; and submit person, vehicle, place of residence to  
12 search and seizure at any time of day or night, to any law enforcement officer, with or without a  
13 warrant and with or without probable cause.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Registered Nursing issue a decision:

- 17 1. Revoking or suspending Registered Nurse License Number 638037, issued to  
18 Jacqueline Nicole Carvajal, also known as Jacqueline Carvajal Viera (Respondent);  
19 2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of  
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED:

10/21/09

*Louise R. Bailey*

LOUISE R. BAILEY, M.ED., RN

Interim Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

SF2009404855

CR: 10/05/09